



OFFICE OF THE ATTORNEY GENERAL
GREG ABBOTT

March 27, 2003

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2003-2092

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177907.

The City of Longview (the "city") received a request for information regarding arrests made at a specified nightclub on December 4, 2002. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't*

Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You have marked information in the submitted offense reports that you seek to withhold under section 552.108. You state that the submitted offense reports pertain to an investigation of alleged violations of city ordinances. You further state that the cases at issue are under active prosecution. Thus, you indicate that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Based on these representations, we agree that section 552.108 is generally applicable to the information you have marked under that provision.

We note, however, that section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. —Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information that is public under *Houston Chronicle* includes the names of investigating officers and an arrestee's social security number. *See Houston Chronicle Publ'g Co.*, 531 S.W.2d at 180, 187-88.

You cite Open Records Decision Nos. 211 (1978) and 143 (1976) in support of your contention that the identities of undercover officers may be withheld under section 552.108. However, these decisions do not address situations in which the identities of undercover officers are basic information from an offense report relating to a pending prosecution. *See* Open Records Decision Nos. 211 (1978) (concerning information contained in audit working papers of audit of Attorney General's Organized Crime Task Force), 143 (1976) (concerning information contained in account, voucher, or contract materials). In general, the city may not withhold the names of peace officers under section 552.108 when their identities are part of the basic information about an arrested person, an arrest, or a crime.¹ *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co.*, 531 S.W.2d at 180. Although this office has recognized that the identities of undercover officers may be excepted from disclosure under section 552.108 in certain specific situations, we find that this case involving basic information does not present such a situation. *Cf.* Open Records Decision No. 366 (1983) (considering that information concerning ongoing undercover narcotics investigation may be excepted from disclosure under statutory predecessor to section 552.108). We therefore

¹ We note that you also raise section 552.103 with respect to the marked information in the submitted reports. Basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

determine that the city must release the names of all investigating officers, including undercover officers.

We note that the social security numbers in the submitted records may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you have marked driver's license numbers that you seek to withhold under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that the city must withhold the Texas driver's license numbers you have marked under section 552.130 of the Government Code. We note, however, that you have marked a Louisiana driver's license number as information you seek to withhold under section 552.130. The Louisiana driver's license number may not be withheld under section 552.130. Gov't Code § 552.130(a)(1). As you raise no other exceptions for this driver's license number, we determine the city must release the number, which we have marked, to the requestor.

In summary, with the exception of basic information, the city may withhold the information you have marked under section 552.108 pursuant to section 552.108(a)(1) of the Government Code. Social security numbers may be confidential under section 552.101 in conjunction with federal law. Texas driver's license numbers must be withheld pursuant to

section 552.130 of the Government Code.² The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

² Based on these findings, we need not reach your remaining arguments under sections 552.101 and 552.130 of the Government Code.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "DRS", with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 177907

Enc: Submitted documents

c: Mr. John Lynch
Longview News-Journal
320 East Methvin Street
Longview, Texas 75601
(w/o enclosures)